HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SRI JUSTICE G.BHAVANI PRASAD

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WRIT APPEAL NO : 16 of 2006

Between:

Majestic Restaurant & Bar,

3-5-1060/5, 1st & 2nd floors,

Narayanaguda, Hyderabad rep by its partner

Mr.K.Bupendra, R/o 5-1-948,

Gowliguda, Hyderabad.

..... APPELLANT

AND

The Commissioner of Police,

Hydeabad city, Basheerbagh,

Hyderabad and others.

.....RESPONDENTS

::JUDGMENT::

Counsel for the Appellant : Mr.D.Sudershan Reddy

Counsel for the Respondents : G.P. for Home

Dated 06.01.2006

Per G.S. Singhvi, CJ

Feeling dissatisfied with the partial relief granted by the learned Single Judge in W.P.M.P.No.165 of 2006, the appellant has filed this appeal under Clause 15 of the Letters Patent.

The appellant is a partnership firm engaged in the business of selling eatables and liquor in retail. For the purpose of selling liquor, it has obtained licence under A.P. Indian Liquor and Foreign Liquor Rules, 1970. The appellant filed Writ Petition No.139 of 2006 by alleging that, even though in terms of the licence, liquor can be served in the bar up to 11 p.m., the respondents are illegally interfering with its business by forcing closure of the restaurant and bar by 9.00 p.m.

In paragraphs 6 and 8 of the affidavit filed in support of the writ petition, the following averments have been made:

> "6. When the matter stood thus, on 1.1.1006 at 9 p.m., the respondent Nos.2 to 4 herein along with Sub Inspector, Narayanaguda and their policemen, suddenly visited the premises of the petitioner Restaurant & Bar and directed to close down business activities of the petitioner Bar & Restaurant by 9 p.m. and also advised to close the business activities by 9 p.m., from 2.1.2006 onwards and also booked the petty case as the business conducted after the permitted hours. When the management is trying to explain about extension of the business hours, through G.O.Ms.No.345 dated 17.6.2002 and as per the Rule 37 of the rules, to run the bar & restaurant up to 11.00 p.m. and the restaurant can supply food till 12 mid night. Again on 2.1.2006, the 4th

respondent visited and forcibly close down the petitioner activities and threatened to arrest if not followed their directions every day. As per the rules, the petitioner is permitted to carry on its business from 11 a.m. to 11 p.m. and the restaurant may supply food till 12 mid night. Since the valid 2-B/IL-17 licence is subsisting, the respondents have no right to interfere with the business activities of the petitioner. The Commissioner Excise and Prohibition permitted the owners of the Bar & Restaurants to carry on the business from 11 a.m. to 12.00 midnight (extending the business hours) as per the Rule 37 of the Rules, through G.O.Ms.345 dated 17.6.2002.

8. I respect fully submits that the first respondent herein directed all the other respondents herein, not allow the certain establishments, Pubs to carry on their business beyond 9 p.m. who are not possessing nor applied the police licence to their restaurants. On the said alleged directions, the respondents are interfering with the business activities of the petitioner herein. In fact no license is required from the Police department under the Hyderabad City Police Act, the same is decided by this Hon'ble Court as stated supra. Even if the said licence is required to take, it is only to prevent the occurrence of peace breaking things. I further submit that the petitioner herein also applied for the Police/Entertainment license for its Restaurant, and the same is pending for consideration of the first respondent, Police Commissioner, Hyderabad. I further submit that there is no pre-condition for issuance of excise licence, as the police licence is must, or there is no bar for starting the activities of restaurant, once the Trade, Fire and Excise license are there, the Bar & Restaurant can run. The police licence is for entertainment purpose only, and the petitioner herein is not providing entertainment as on today, where the license is not issued as the same is pending before the 1st respondent.

Along the writ petition, the appellant filed W.P.M.P.No.165 of 2006 for issuance of a direction to the respondents not to interfere with its business activities relating to restaurant and bar.

The learned Single Judge passed order dated 2-1-2006 in W.P.M.P.No.165 of 2006. The same reads as under:

"It is stated that the petitioner obtained a licence for retail sale of Indian made Foreign Liquor (IMFL) under Form-2B from the Prohibition and Excise Superintendent, Dhoolpet to sell all kinds of Indian Liquor and Foreign Liquor in the premises bearing No.3-5-1060/5, first and second floors, Narayanaguda, Hyderabad under the name and style of

M/s Majestic Restaurant and Bar.

It is stated that under the relevant Rules made under A.P. Excise Act, Bar shall be opened between 11.00 a.m. to 12.00 p.m. but the police are not allowing the petitioner to open the Bar after 9.00 p.m. and illegally booking petty cases.

Admittedly, the petitioner has not obtained any licence for establishment of the public place of entertainment, category-II from the Commissioner of City Police.

Every public place of Entertainment requires to obtain a licence from the Commissioner of City Police under the relevant regulations made pursuant to the City Police Act.

It is stated that the petitioner has applied for grant of necessary licence but the Commissioner has not issued the licence.

In the absence of any licence, it cannot be said that booking of petty cases under the City Police Act is illegal and arbitrary.

Merely because the Excise licence has been obtained, it cannot be said that all the licences required to be taken under the Police Act and under the regulations made pursuant to the City Police Act are exempted.

However, the first respondent is directed to consider and dispose of the application filed by the petitioner for grant of licence for public place of Entertainment within two weeks from the date of receipt of copy of this order.

Post the WPMP 165 of 2006 after Sankranti vacation."

Learned counsel for the appellant vehemently argued that the learned Single Judge committed a serious error by refusing to restrain respondents from unlawfully interfering with the business activities of his client. He submitted that in terms of the conditions of licence granted under the Excise Act, the appellant is entitled to carry on its business of restaurant and bar till mid night, but respondents 2 to 4 are regularly interfering with its business activities at the instance of respondent No.1.

In the context of the averments contained in paragraph 8 of the affidavit filed in support of the writ petition and the submission of the learned counsel, we asked him to show any tangible material to support his client's allegation that respondent No.1 has directed his subordinate authorities to stop the business activities of the appellant after 9.00 p.m. but the learned counsel could not draw our attention to any

such material. We also asked the learned counsel to show whether his client has ever protested against the so-called oral instruction given by respondent No.1 to his subordinate officers not to allow activities in the restaurant and bar after 9.00 p.m., but he could not produce the relevant instructions. Therefore, it is not possible to act on the bald assertions contained in paragraphs 6 and 8 of the affidavit filed in support of the writ petition that the respondents are illegally interfering in the activities of the petitioner. To us, it appears that the writ petition has been filed as a counterblast to the action taken by the authority concerned to register criminal case against the appellant.

For the reasons mentioned above, we hold that the appellant has failed to make out a case for interference with the order of the learned Single Judge and the appeal is liable to be dismissed. Ordered accordingly.

While dismissing the appeal, we deem it proper to observe that the pendency of the writ petition filed by the appellant shall, in no manner, adversely affect the case registered by the competent authority against the appellant.

G.S. SINGHVI, CJ

6th January, 2006

G. BHAVANI PRASAD, J

msv/vtv/svs